There is, however, a conflict of authority in the case where there is a limitation of authority by the client. In 1811 in *Filmer* v. *Delber*[1] Mansfield C.J. refused to interfere when a defendant claimed that she had expressly desired her attorney not to consent to any rule of reference after the attorney and counsel had expressed agreement to refer and suggested that the defendant's remedy is by action against her attorney. He said: "There would be no end to these applications if the court were to interfere; such interference would lead to collusion; when a party did not like the prospect of the reference, he would say that he had never given his attorney authority to refer." In *Mathews* v. *Munster*[2] the Court of Appeal held that the consent of the client is not needed for a matter which is within the ordinary authority of counsel, and, if a compromise is entered into by counsel in the absence of the client, the client is bound. And in *Welsh* v. *Roe*[3] it was held that where an action has been commenced, the solicitor retained has an implied authority to compromise the action and no limitation of such implied authority can be relied upon by the client as against the other side unless such limitation had been brought to the knowledge of the other side before the compromise was arranged.

However in *Neale* v. *Gordon Lennox*[4] the court interfered when counsel exceed his authority. In *Shepherd* v. *Robinson*[5] counsel had consented to judgment without knowing that his client had told the solicitors that the case was not to be settled and the court ordered that the case be restored to the list for hearing. And in *Marsden* v. *Marsden*,[6] the court interfered when counsel acted against express instructions.

On a review of the cases, it seems to me that each case should be decided on its merits. As a general rule, it is against public policy to allow settlements concluded between solicitors on behalf of their respective clients in accident cases to be challenged with impunity. To do so would open the flood-gates of endless litigation initiated by parties who become wise after the event. It will also discourage the practice of out of court settlements. That would be a great pity. But a settlement is a contract and like all contracts it is voidable on specific grounds e.g. undue influence, misrepresentation, fraud or mistake. If this can be shown it is then the duty of the court to interfere so that justice is done.

In this case, *prima facie* there is a valid settlement, conducted between advocates and solicitors of this court. There can be no allegation of inequality of bargaining power as was the case in *Clifford Davis Management Ltd.* v. *W.E.A. Records, Ltd. & Anor.*[7] However, if the allegations of the plaintiff are true, then a grave injustice has been done to a blind man. But affidavit evidence alone will not suffice: see *Gilbert* v. *Endean*.[8] The allegations are against a member of the Bar who is an officer of this court concerning his professional conduct. He has strenuously denied in his affidavit in reply every allegation made by the plaintiff. It is for the plaintiff to prove these allegations. He has not done so. The remedy of the plaintiff is to commence an action to set aside the settlement: see *In re Roberts*;[9] *Emeris* v. *Woodward*.[10] In the meantime, the settlement out of court stands and I would grant the order in terms of the summons-in-chambers with costs.

Order accordingly.

Solicitors: *Skrine & Co.; Lovelace & Hastings.*

E. GOPAL & ANOR. v. AWANG BIN MONA

[A.C.J. (Syed Agil Barakbah J.) November 28, 1976]
[Alor Star — Civil Appeal No. 3 of 1976]

Tort — False imprisonment — Damages — Arrest and detention under Emergency (Public Order and Prevention of Crime) Ordinance, 1969 — Error of effective date of detention order — Rectification by Asst. Secretary — Meaning of "good faith" — Unlawful detention for one day — Emergency (Public Order and Prevention of Crime) Ordinance, 1969, ss. 3(1), 3(3), 4(1), 4A, 4B — Government Proceedings Ordinance 1956, ss. 5, 6(2) & 39 — Police Act 1967, s. 32(1) — Emergency (Essential Powers) Ordinance, 1969, s. 5.

The respondent was arrested on June 8, 1973 and detained in the police lock-up, Alor Star, under section 3(1) of the Emergency (Public Order and Prevention of Crime) Ordinance, 1969 till June 9, 1973 and at Alor Star prison from June 10, 1973 to August 6 1973, altogether for a period of sixty days under section 3(3) of the said Ordinance. On June 1, 1973, the first appellant, the officer in charge, applied to the Minister of Home Affairs for a detention order under section 4(1) of the Ordinance. Due to an oversight the date of the respondent's arrest was erroneously stated as at June 9, 1973 instead of June 8, 1973. At the Ministry, the Assistant Secretary recommended that a detention order be issued and take effect from August 8, 1973, i.e., immediately upon the expiry of the sixty day period calculated on the basis that the respondent was arrested on June 9, 1973. The Minister signed the detention order on July 24, 1973 but it was sent to the first appellant on August 5, 1973. The error was then discovered. The Assistant Secretary altered the date on the said order by erasing the figure "8" and superimposed over it with the figure "6", thereby purporting to alter the effective date to August 6, 1973. He did not refer the alteration to the Minister for his initials because the Minister had passed away.

The court had to decide whether the detention order as altered by the Assistant Secretary subsequent to its issue by the late Minister was valid and effective. The learned President awarded the plaintiff damages for false imprisonment. The defendants appealed.

Held, allowing the appeal: (1) so long as the exercise of the powers by the Minister was done within the ambit of the Ordinance which Parliament had given him the power to exercise and was done *bona fide*, the question as to his competency or otherwise was not within the competence of the court. All that the court could do was to see that the power which it claimed was one which fell within the four corners of the Ordinance, that it was exercised in good faith and also to see whether the order directed that to be done which the Ordinance gave the Minister the authority to direct;

(2) the late Minister in issuing the detention order acted in pursuance of his statutory powers. Any alteration to the order including the date of its commencement must be made or initialled by him, and on his demise, by the Assistant Minister if no Minister had yet been appointed in his place. The Assistant Secretary had no power under the Ordinance to make such alteration;

(3) the date formed part and parcel of the order. Therefore, its unauthorised alteration would render the order ineffective;

(4) the meaning of "good faith" within the context of the Emergency (Essential Powers) Ordinance, 1969 included due inquiry and implied not only an upright mental attitude but also clear conscience and that ordinary prudence had been exercised according to the standard of a reasonable person;

(5) in the circumstances the first appellant ought to be protected by section 5 of the Emergency (Essential Powers) Ordinance 1969 no matter how strict the Ordinance is construed in favour of the respondent and the learned President was wrong in holding that he could not claim protection under the Ordinance.

[**Editorial Note:** The appeal to the Federal Court was dismissed on December 4, 1977 (Federal Court Civil Appeal No. 8 of 1977). No written grounds of judgment were delivered by the court.]

Cases referred to:-

(1) *Ronnfeldt* v. *Phillips* (1918) 35 T.L.R. 46.
(2) *Point of Ayr Collieries Ltd.* v. *Lloyd-George* [1943] 2 All E.R. 546.
(3) *Liversidge* v. *Anderson* [1941] 3 All E.R. 338.
(4) *Greene* v. *Secretary of State for Home Affairs* [1941] 3 All E.R. 388.
(5) *Carltona Ltd.* v. *Commissioners of Works* [1943] 2 All E.R. 560.
(6) *Che Su binti Shafie* v. *Superintendent of Prisons, Pulau Jerajak, Penang* [1974] 2 M.L.J. 194.
(7) *Zainab binti Othman* v. *Superintendent of Prisons, Pulau Jerejak, Penang* [1975] 1 M.L.J. 76.
(8) *Jones* v. *Gordon* (1877) 2 A.C. 616 & 629.
(9) *Le Hong Mi* v. *Attorney-General of Hong Kong & Ors.* A.I.R. 1920 p. V. 219.
(10) *Ananda* v. *Chief Secretary, Government of Madras* A.I.R. 1966 S.C. 657.
(11) *Little* v. *Commonwealth* (1947) 75 C.L.R. 94, 108.
(12) *Spooner* v. *Juddow* 18 E.R. 734, 744.

CIVIL APPEAL.

Lim Beng Choon (Senior Federal Counsel) for the appellants.

Karpal Singh for the respondent.

Syed Agil Barakbah J.: This is an appeal against the decision of the President, Sessions Court, Alor Star, made on January 18, 1976, giving judgment in favour of the plaintiff and awarding compensatory damages in the sum of $1,500 and exemplary damages in the sum of $500 for false imprisonment and costs of the suit against the appellants.

Senior Federal Counsel Lim Beng Choon appeared for both the appellants (defendants in the court below) and Mr. Karpal Singh for the respondent (plaintiff in the court below).

The relevant facts as accepted by the learned President are as follows: —

The respondent was arrested on June 8, 1973, at about 10.00 a.m. and detained in the police lock-up, Alor Star, under section 3(1) of the Emergency (Public Order and Prevention of Crime) Ordinance, 1969, (hereinafter called "the Ordinance") till June 9, 1973, and at the Alor Star prison from June 10, 1973, at about 10.00 a.m. to August 6, 1973, altogether for a period of sixty days as empowered under sub-section (3) of section 3 of the Ordinance. Meanwhile on June 1, 1973, the first appellant, the O.C.C.I., Kedah/Perlis, applied to the Minister of Home Affairs, who was then the late Tun Dr. Ismail, for a detention order under section 4(1) of the Ordinance. Due to an oversight the date of the respondent's arrest was erroneously stated as June 9, 1973, instead of June 8, 1973. At the Ministry, the Assistant Secretary Encik Jamaluddin (DW2), whose responsibility was to study applications for detention orders and submit recommendations to the Minister, recommended that a detention order be issued and take effect from August 8, 1973, i.e. immediately upon the expiry of the sixty day period calculated on the basis that the respondent was arrested on June 9, 1973. The Minister signed the detention order on July 24, 1973. (Exhibit P1). The order was sent and received by the first appellant on August 5, 1973. He immediately discovered the error of the effective date which was the 6th instead of August 8, 1973. Through A.S.P. Haji Junid, he returned the order to the Ministry requesting that the effective date be rectified accordingly. According to the first appellant, the sixty day period of police detention expired on the 7th because of the error, and the respondent would be detained unlawfully for one day unless the effective date was altered to any date prior to August 7, 1973. The A.S.P. referred the matter to the Ministry on the 6th. As requested, Encik Jamaluddin altered the date of the said order by erasing the figure "8" and superimposed over it with the figure "6", thereby purporting to alter the effective date to August 6, 1973. He did not refer the alteration to the Minister for his initials because the Minister, Tun Dr. Ismail, had passed away on August 4. Having obtained the alteration, the A.S.P. brought back the order to the first appellant the same day. The respondent was transferred from the prison to the police lock-up, Alor Star, on the same day when he was served with the order at about 9.00 p.m. The following day at about noon, he was transferred from the lock-up to the rehabilitation centre, Pulau Jerajak, reaching there at about 2.00 p.m. where he was detained.

Originally there were six grounds of appeal but the third ground was abandoned by the Senior Federal Counsel leaving only five grounds. Grounds 1 and 2 were argued together. The first two grounds allege that the learned President erred in law in holding that the alteration of the date of the said detention order (Exhibit P1) by Encik Jamaluddin rendered the order invalid and ineffective and in doing so, the President failed to consider the alteration was a mere administrative act.

Mr. Lim in his submission dwelt more on the question of the propriety of the detention order and urged that the alteration did not affect the substantial requirement of the Ordinance but related rather to the form or the procedure. The real question in dispute does not attack the propriety nor the authority of the order which was duly exercised by the Minister in accordance with the powers provided in the Ordinance. (section 4(1)). Nor was there any challenge as to the grounds of detention. The real issue was whether the detention order (Exhibit P1) as altered by the Assistant Secretary (DW2) subsequent to its issue by the late Minister of Home Affairs, Tun Dr. Ismail, was valid and effective. The learned President for reasons given by him concluded that such alteration rendered the order invalid and ineffective. It is of course an accepted principle that so long as the exercise of the powers by the Minister is done within the ambit of the Ordinance which Parliament has given him the power to exercise and is done *bona fide*, i.e. properly exercised, the question as to his competency or otherwise is not within the competence of the court. All these matters are placed by Parliament in the hands of the Minister in the belief that he will exercise the

powers properly. If he does not do so, he is liable to the criticism of Parliament. In such matters the courts have no jurisdiction to review a *bona fide* decision of the Minister, viz. to inquire into the reasonableness, the policy, the sense or any other aspect of the transaction. All that the courts can do is to see that the power which it claimed to exercise is one which falls within the four corners of the Ordinance, that it is exercised in good faith and also to see whether the order directed that to be done which the Ordinance gives the Minister the authority to direct. (See *Ronnfeldt* v. *Phillips*,[1] *Point of Ayr Collieries Ltd.* v. *Lloyd-George*,[2] *Liversidge* v. *Anderson*,[3] *Greene* v. *Secretary of State for Home Affairs*[4] and *Carltona Ltd.* v. *Commissioners of Works*[5]). The authorities cited are however not in point in the present appeal.

In *Carltona* v. *Commissioners of Works* the Court of Appeal was faced with the argument that the requisitioning authority never brought their minds to bear on the propriety of the order requisitioning the appellant's factory under the Defence (General) Regulations, 1939. Lord Greene M.R. ruled that the person acting for the First Commissioner who in turn has the statutory power to act for the Commissioners of Works, was the Assistant Secretary. He was a responsible official of the Ministry entrusted with the work of looking after this particular matter to assist the Minister in accordance with the system of departmental organisation and administration to deal with multifarious functions which it is impossible for the Minister alone to attend to. The Minister remains responsible to answer before Parliament for anything that his officials have done under his authority.

As I have said, the *ratio decidendi* in that case is not applicable to the present issue. My purpose of quoting the case is because Mr. Lim cited it in order to substantiate his argument that the Assistant Secretary Encik Jamaluddin (DW2) has a similar duty and was acting in a similar way as the Assistant Secretary of the Ministry of Works in that case. I agree with respect as regards administrative duties and functions, it may well be similar but note that he has no power to make a decision. According to his evidence, his duty was to study the propriety of the case and put up a recommendation to the Minister for the issue of the detention order. Section 4(1) requires the Minister to make a detention order directing a person to be detained for a period not exceeding two years if he is satisfied, with a view to preventing any person from acting in any manner prejudicial to public order or it is necessary for the suppression of crimes involving violence, that the person should be detained. The Minister is also empowered to revoke or suspend any such order under sections 4A and 4B respectively. The word "Minister" according to the Interpretation Act, 1967, refers to the Minister for the time being responsible for the matter in connection with which the reference is made (i.e. the Minister of Home Affairs) and its definition includes an Assistant Minister. That the late Minister in issuing the detention order (Exhibit P1) acted in pursuance of his statutory powers is clear. Any alteration to the order including the date of its commencement must therefore be made or initialled by him, and on his demise, by the Assistant Minister if no Minister had yet been appointed in his place. The Assistant Secretary had no power under the Ordinance to make such alteration. My construction of the relevant provisions of the Ordinance leads me to the conclusion that the date of commencement of the order (Exhibit P1) is of vital importance. The order itself in the second paragraph requires the person named below it (i.e. the respondent) to be detained for the period of two years with effect from the date written below, i.e. (as originally) August 8, 1973.

Secondly, the provision of section 3(3) gives the police powers to detain the respondent for a period of sixty days without a detention order followed by the proviso enabling certain police officers of or above the ranks mentioned therein to detain the person for periods specified therein. It follows therefore that in complying with the full sixty-day detention (as the police did in this case), the actual date of arrest had to be made the crucial basis. It is equally important for the detention order issued subsequently to bear the date of commencement immediately on the expiry of the sixty-day detention period calculated on the basis of the date of arrest. Thus, even though the late Minister signed the order (Exhibit P1) on July 24, 1973, the date that the order was to take effect was inserted as August 8, 1973, as the starting point for the two-year detention under section 4(1) to begin. Above all, it shows that the Minister intended that the detention order should commence on August 8, 1973. It was conceded by Mr. Lim that the actual date was 6th and not August 8, 1973.

In the circumstances, I cannot accept Mr. Lim's contention that the alteration at the most affects the form or procedure or was purely an administrative act of the Assistant Secretary. The Minister is empowered under section 13G(2)(a) to prescribe such forms necessary to be used in connection with the matters dealt within. I agree any departure from the form or procedure may be excusable as an irregularity. However, in the present case, it is my considered opinion that the date forms part and parcel of the order. It follows therefore that its unauthorised alteration would render the order ineffective and not valid, the more so as conceded by Mr. Lim that a copy of the said order prior to the alteration of the date was never served on the respondent as required by section 5(1) of the Ordinance. It was served only after the unauthorised act and in its defective state. (Another order was subsequently issued on August 21, 1973, signed by the present Minister (Exhibit P3) and served on the respondent). (See *Che Su binti Shafie* v. *Superintendent of Prisons, Pulau Jerajak, Penang*,[6] and *Zainab binti Othman* v. *Superintendent of Prisons, Pulau Jerejak, Penang*,[7] both by Chang Min Tat J.; His Lordship was dealing with the application for *habeas corpus* but touched on the principles relating to the detention order on similar facts).

I accept with respect the finding of the learned President on the matter.

The fourth ground relates to whether the learned President erred in law in holding that the first appellant cannot avail himself of section 32(1) of the Police Act, 1967. The section states as follows: —

"(1) Where the defence to any suit instituted against a police officer, an extra police officer, volunteer reserve police officer or an auxiliary police officer is that the act complained of was done in obedience to a warrant purporting to be issued by any competent authority, the court shall, upon production of the warrant containing the signature of such authority and upon proof that the act complained of was done in obedience to such warrant, enter judgment in favour of such police officer, extra police officer, volunteer reserve police officer or auxiliary police officer.

(2) No proof of the signature of such authority shall be required unless the court has reason to doubt the genuineness thereof; and where it is proved that such signature is not genuine, judgment shall nevertheless be given in favour of such police officer or extra police officer if it is proved that, at the time when the act complained of was committed, he believed on reasonable grounds that such signature was genuine."

The learned President held the word "warrant" to mean a warrant issued by a judicial authority in the course of administering justice and does not include a detention order which is issued at the instance of a Minister as a preventive or security measure.

The word "warrant" is not defined in the Police Act nor in the Interpretation Act, 1967. Police duties in the Police Act are numerous and not confined only to executing judicial warrants. Further the words "any competent authority" do not refer to judicial authority alone. In the circumstances, my view is that it is the intention of Parliament that the section be capable of a wide construction and ought therefore to be given its ordinary meaning. The *Shorter Oxford English Dictionary* (3rd Edition) gives the meaning of "warrant" as "a command or permission of a superior which frees the doer of an act from blame or legal responsibility"; secondly, it is "a writing issued by the sovereign, an officer of state, or an administrative body, authorising those to whom it is addressed to perform some act"; thirdly, it is "a writ or order issued by some executive authority, empowering a ministerial officer to make an arrest, a seizure or a search, to execute a judicial sentence, etc.". It is therefore wide enough to include a detention order issued by the Minister of Home Affairs under section 4(1) of the Ordinance.

Be that as it may, section 32(1) of the Police Act as pleaded at paragraph 6 of the amended statement of defence is to be read together with sections 6(2) and 39 of the Government Proceedings Ordinance, 1956. That point was not argued in this appeal but nevertheless because it has been pleaded, I propose to deal with it without having recourse to the views of counsel on both sides. Section 6(2) limits or negatives liability of the Government in any proceeding under section 5 against a police officer for any act, neglect or default committed by such officer if any written law limits or negatives the liability of such officer in such act, etc., and applies only if the proceedings against the Government had been proceedings against such officer. Section 39 enables the Government to take advantage of any written law in any civil proceedings against the Government and to rely on such law either in whole or in part as a defence. In short, in the present appeal to which section 6(2) applies, the Government as second defendant in the court below may well have the right to rely on the provision of section 32 of the Police Act if, and only if, the first appellant has from the facts and surrounding circumstances the same right of reliance on the section. Now, reading the section as a whole, it seems to me that proof is still required that the officer who executed the order was acting in obedience to such warrant in relation to the act complained of. Sub-section (2) refers to the genuineness or otherwise of the warrant. So long as the officer believes on reasonable grounds that the signature on it was genuine, the court will have to enter judgment in favour of such officer even if it is proved the signature is not genuine. In the present appeal, there is no dispute as to the genuineness of the signature of the late Tun Dr. Ismail in the capacity of the Minister of Home Affairs, the main issue being the unauthorised alteration of the date of the detention order made subsequent to the issue itself. The first appellant, i.e. the O.C.C.I., Kedah/Perlis, did not himself serve the order (Exhibit P1) in detaining the respondent but he was instrumental in obtaining the said order and was well acquainted with the alteration having been made. It seems to me he knew the facts and circumstances which led to the detention order being issued. The question whether he acted in good faith in pursuance of a duty imposed by law in section 5 of the Government Proceedings Ordinance therefore arises. That point will be considered in the next ground. I do not therefore think in the circumstances the provision of section 32(1) of the Police Act can properly be invoked in this case.

The next question is whether the learned President erred in law and in fact that the first appellant cannot claim protection under section 5 of the Emergency (Essential Powers) Ordinance, 1969. (P.U.(A) 146).

Now, section 5 is intended to protect any public officer from any suit, prosecution or any legal proceeding in any court for any act ordered or done by him either personally or in his official capacity, during the emergency period for the purpose of maintaining order or public security or for carrying into effect any regulation, order, rule, by-law, direction or notice issued under the Ordinance, provided that his act was done *in good faith and in reasonable belief that it was necessary for the purpose to be served* thereby. (The emphasis is mine).

In concluding that the first appellant could not seek the protection of that section, the learned President gave the following grounds: —

"Whether or not the first defendant in this case had acted in good faith is a question of fact, to be determined from the whole circumstances. I have given careful consideration of the evidence adduced before me. In this case it is quite probable from the evidence that Mr. Gopal was acting in good faith for the period between 10.00 a.m. on the 6th of August to 9.00 p.m. on the same day and therefore for this period he is protected by section 5. However, I am not satisfied that he still acted in good faith from the very moment he proceeded to serve the plaintiff with the altered order at 9.00 p.m. For at this stage from the circumstances he must have been aware of what had transpired at the Ministry and must have appreciated the fact that the order was no longer valid, and therefore by proceeding to serve the order to the plaintiff knowing fully well that it was invalid he was as a matter of fact wilfully deceiving the plaintiff. Therefore from his conduct between 9.00 p.m. the 6th of August up to 2.00 p.m. the following day — a matter of 16 hours — Mr. Gopal cannot take refuge under section 5."

It is clear the proviso under section 5 of the Ordinance requires two ingredients to be proved, viz.

(1) that his act was done in good faith; and (2) in reasonable belief that it was necessary for the purpose to be served thereby. The President appeared to have considered only the first ingredient.

What is then the meaning of "good faith" within the context of the Ordinance? It includes due inquiry and implies not only an upright mental attitude but also clear conscience and that ordinary prudence has been exercised according to the standard of a reasonable person. (See *N.S. Bindra's* Interpretation of Statutes, 6th Ed., 1975, p. 926). As Lord Blackburn said with regard to the person on whom the onus of proof lies in such a case in *Jones* v. *Gordon*[8]: —

"But if the facts and circumstances are such that the jury, or whoever has to try the question came to the conclusion that he was not honestly blundering and careless, but that he must have had a suspicion that there was something wrong, and that he refrained from asking questions, not because he was an honest blunderer or a stupid man, but because he thought in his own secret mind — I suspect there is something wrong, and if I ask questions and make further inquiry, it will no longer be my suspecting it, but my knowing it, and then I shall not be able to recover — I think that is dishonesty."

That is a question of fact from which the learned President was satisfied that the first appellant did not act in good faith from the moment Exhibit P1 was served on the respondent. But as I said earlier, the President did not consider the second ingredient.

Mr. Lim's contention that the element of "good faith" ought to be measured with the requirement of the second ingredient i.e. the first appellant's act was done "in reasonable belief that it was necessary for the purpose to be served thereby" is on sound footing, considering the connecting link between the two Emergency Ordinances regarding the purpose of securing public order. At the same time, I am mindful of Mr. Karpal Singh's submission that a statute which affects the liberty of the subject must be strictly interpreted. (See *N.S. Bindra's* Interpretation of Statutes, p. 491; *Le Hong Mi* v. *Attorney-General of Hong Kong & Ors.*[9] and *Ananda* v. *Chief Secretary, Government of Madras*[10]).

As regards the second ingredient, persuasive authority is found in *Little* v. *Commonwealth.*[11] Dixon J. said: —

"In provisions of this kind it is common to find such expressions as 'act done in pursuance of this section' or 'statute,' 'anything done in execution of this statute' or 'of the powers or authorities' given by a statute, etc. Such enactments have always been construed as giving protection, not where the provisions of the statute have been followed, for their protection would be unnecessary, but where an illegality has been committed by a person honestly acting in the supposed course of the duties or authorities arising from the enactment."

As Lord Campbell, speaking for the Privy Council in *Spooner* v. *Juddow,*[12] said: —

"There can be no rule more firmly established, than that if parties *bona fide* and not absurdly believe that they are acting in pursuance of Statutes, and according to law, they are entitled to the special protection which the Legislature intended for them, although they have done an illegal act."

The test is whether the first appellant honestly believed in the existence of a state of facts which, if it had existed, would have afforded a justification under the statute. *Halsbury's* Laws of England, 2nd Ed., Vol. 26, page 296, provides the correct rule: —

"A defendant who honestly intends to act in execution of a public duty may be protected although he acts in ignorance, or under a mistake, as to the law."

It is clear that in both ingredients, the element of honesty must be present.

Now, considering the facts and circumstances of the case, in the first place would the first appellant, a senior police officer, as a reasonable man become suspicious of the alteration of the date in Exhibit P1. He ought to have known Tun Dr. Ismail had passed away but there was a deputy minister available. He did not go himself to the Ministry but sent A.S.P. Haji Junid for the purpose and was informed by telephone that the Assistant Secretary had erased the date. Later he saw the superimposition of the figure "6" on what was formerly the figure "8" on the order without any initial or signature. Yet the order was proper and duly signed by the late Minister. The error as to the date would seem to him to be a clerical error due to miscalculation. The alteration was made by a responsible officer of the Ministry in charge of the police section. On the other hand, he was dealing with a person who has a string of convictions, a number of which involve crimes of violence and which the late Minister was satisfied that it was necessary to suppress or prevent by ordering him to be detained under section 4(1) of the Ordinance. The respondent could not in the circumstances be released by the first appellant. He has no power under the law. Only the Minister has such power to revoke but on reasonable grounds.

Taking into account all the circumstances as a whole, the first appellant was faced with a very difficult situation. The only reasonable step for him to take and which he did, was to detain the respondent under the order in the reasonable belief that it was necessary to do so and later apply for a fresh order. (See Exhibit P3). In doing so, he acted in execution of a public duty. If at all, he might have acted under a mistake of the law. According to the accepted principle he ought to be protected by section 5 of the Ordinance in question, no matter how strict the Ordinance is construed in favour of the respondent.

As the learned President did not appear to apply all the facts and surrounding circumstances to the second ingredient, I have no alternative but to disagree with his findings. The appeal is allowed. The judgment and order for damages in favour of the respondent is set aside. The suit is dismissed with costs.

With regard to the last ground relating to the award of damages, I need not deal in detail in view of the above. Nevertheless, I think that considering the respondent's background and very low earning capacity as a fisherman, if indeed he was, (he has been in and out of prison from 1947 till 1969), they are on the high side. He does not appear to deserve such award for such a short space of detention; the damages, if at all, ought to be nominal.

Appeal allowed.

Solicitors: *Karpal Singh & Co.*